

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

INTELLECTUAL VENTURES I, LLC;
INTELLECTUAL VENTURES II, LLC,

Plaintiffs,
v.

LENOVO GROUP LTD., LENOVO
(UNITED STATES) INC., LENOVOEMC
PRODUCTS USA, LLC, AND EMC
CORPORATION,

Defendants.

Case No. 1:16-cv-10860-PBS

INTELLECTUAL VENTURES I, LLC;
INTELLECTUAL VENTURES II, LLC,

Plaintiffs,
v.

NETAPP, INC.,

Defendant.

Case No. 1:16-cv-10860-PBS

PLAINTIFFS' MOTION FOR LEAVE TO AMEND INFRINGEMENT CONTENTIONS

Plaintiffs Intellectual Ventures I, LLC and Intellectual Ventures II, LLC (collectively, “IV”) hereby seek leave to amend their infringement contentions relating to U.S. Patent No. 6,968,459 (“459 Patent”). The Court’s Amended Scheduling order provided for an amendment as of right within 30 days after the Court’s ruling on claim construction, and this motion is within that time window. Moreover, good cause for the amendment exists pursuant to L.R. 16.6(d)(5)(A), as IV’s proposed narrow amendments are made to address the court’s claim construction ruling issued on September 9, 2019.

I. RELEVANT FACTS

Pursuant to the Court’s scheduling order, IV served its preliminary infringement contentions on September 2, 2016. That scheduling order, as amended, provides that “[s]uch disclosures may be amended and supplemented up to 30 days after the date of the court’s ruling on claim construction.” *See* Dkt. No. 118; Case No. 16-cv-10868-PBS, Dkt. 32.

On September 9, 2019, the Court issued its claim construction ruling regarding the disputed terms of the ’459 patent. Dkt. No. 315. Relevant to this motion and IV’s proposed amendment, the Court construed the term “detecting a storage device within a storage drive” to mean “detecting a removable storage device within a storage drive,” where “storage device” is “a device having a storage medium for holding digital information,” and “storage drive” is “a device suitable for servicing access requests for a storage device.” *Id.* These rulings are different from the constructions proposed by IV. *See, e.g.*, Dkt. No. 233.

IV’s proposed amendments to its infringement contentions are narrowly tailored to address the Court’s claim construction rulings. IV’s proposed amended contentions are attached hereto as Exhibits A–D.

II. ARGUMENT

IV's proposed amendments fall within the 30-day time window for amendments allowed for in the Court's scheduling order. Moreover, the Patent Local Rules, as amended in 2018, contemplate such an amendment as supported by good cause.

Local Rule 16.6(d)(5) provides that examples of circumstances that support a finding of good cause include "a claim construction by the court that is different from that proposed by the party seeking amendment within 28 days of the court's claim-construction ruling." The Court's claim construction rulings to which IV's amendments are directed, including with respect to the "detecting a storage device within a storage drive" limitation, are different from the constructions proposed by IV, and this motion is being made within 28 days of that order. Accordingly, IV's proposal falls squarely within the good cause contemplated by the Local Rules.

Defendants will not be prejudiced by the proposed amendments, as the amendments are timely and are narrowly tailored to address the Court's claim construction rulings on these terms.

See, e.g., DataTern, Inc. v. MicroStrategy, Inc., No. CV 11-11970-FDS, 2017 WL 1147441, at *4 (D. Mass. Mar. 27, 2017) (good cause not required for timely amendments to contentions). Moreover, discovery is still in the early stages and, to the extent necessary, Defendants will thus have ample time to obtain further discovery on IV's amended contentions.

III. CONCLUSION

For the foregoing reasons, IV respectfully requests that the Court grant IV leave to amend its infringement contentions for the '459 patent.

Dated: October 7, 2019

Respectfully submitted,

/s/ Brian Ledahl

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a)(2), counsel for IV informed counsel for Defendants of its intent to file this motion and requested a meet and confer to the extent necessary. Counsel for Defendants did not respond.

CERTIFICATE OF SERVICE

I hereby certify pursuant to the Federal Rules of Civil Procedure and Local Rules 5.2 and 5.4 that this document was served upon the attorney(s) of record for each party through the ECF system on October 7, 2019.

/s/ Brian Ledahl
Brian Ledahl